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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JOYCE S. HEILIG,

Plaintiff and Appellant,

v.

RALPH E. WOOD,

Defendant and Respondent.

A109483

(Alameda County  
Super. Ct. No. RG03115808)

Plaintiff Joyce S. Heilig appeals from the judgment following the trial court's order sustaining without leave to amend defendant Ralph E. Wood's demurrer to her second amended complaint. We reverse as to dismissal of the first and third causes of action and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Because a demurrer admits all material facts properly pleaded, we base our recitation of the facts on plaintiff's second amended complaint. (*Gervase v. Superior Court* (1995) 31 Cal.App.4th 1218, 1224.)

Plaintiff Heilig is the daughter of John Spengler, who at the time of his death in 1981 was married to Doris Spengler. Defendant Ralph Wood is Doris Spengler's son. It appears that Heilig is John Spengler's daughter from a prior relationship and Ralph Wood

is Doris Spengler's son from a prior relationship. It also appears that neither John nor Doris Spengler had any other children.

Doris Spengler died in 1996, her estate was entered into probate, and Ralph Wood was appointed administrator of the estate. In her will, she bequeathed to Wood her home and a duplex, both in Oakland; she bequeathed \$20,000 to Heilig and \$1,000 to each of Heilig's children. Although Heilig has lived at the same address in Oakland since 1983 and has been listed in the telephone book and in voter registration records for many years, Wood failed to notify Heilig of the probate proceedings. Wood listed Heilig in the initial petition for probate of Doris Spengler's will with address "unknown" and Wood did not list Heilig as an individual receiving notice of the petition.

In 2000, the duplex was sold for \$510,000. Heilig was not mailed a copy of the notice of the proposed sale. Heilig learned about the probate proceedings in the year 2003; she filed a claim requesting the proceeds of the sale of the duplex, plus interest.

Heilig also filed suit against Wood, individually and in his capacity as administrator of the estate of Doris Spengler. The second amended complaint contains three causes of action. The first cause of action, for breach of contract, alleges that John and Doris Spengler entered into an oral agreement to bequeath the duplex to Heilig following their deaths: "Prior to JOHN C. SPENGLER'S death, JOHN C. SPENGLER and DORIS A. SPENGLER orally agreed on numerous occasions that upon the death of both . . . the PROPERTY would be devised and left to JOYCE S. HEILIG, or if she be deceased, to her five daughters . . . ." The complaint further alleges that Wood is estopped from relying on the statute of frauds to avoid the agreement because John Spengler "was induced to seriously change his position as to the ownership of the PROPERTY in reliance on the contract and that an unjust enrichment would result if [Doris Spengler] and her Estate are allowed to invoke the Statute of Frauds." The complaint alleges that Doris Spengler benefited from the agreement because the property

provided rental income and she “had the benefit of all the incidents of ownership of the PROPERTY from the time of her husband’s death in 1981.”

The second cause of action, for extrinsic fraud, alleges that Wood fraudulently concealed the probate proceedings from Heilig. The third cause of action, for negligence, alleges that Wood negligently failed to inform Heilig of the probate proceedings.

Wood demurred to the second amended complaint in its entirety. The trial court sustained the demurrer without leave to amend and dismissed the case.

### DISCUSSION

“Our task in reviewing a judgment sustaining a demurrer is to determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] We assume the truth of the properly pleaded material facts and the reasonable inferences that may be drawn therefrom. [Citation.] We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] We also consider matters that may be judicially noticed.” (*Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1083.) We “liberally” construe the allegations of the second amended complaint “with a view to substantial justice between the parties.” (Code Civ. Proc., § 452.)

The parties agree that the alleged oral agreement between John and Doris Spengler is unenforceable by reason of the statute of frauds unless defendant Wood is equitably estopped from relying on the statute of frauds. Because John Spengler died in 1981, the applicable statute is Civil Code section 1624. (*Estate of Housley* (1997) 56 Cal.App.4th 342, 350.) In *Day v. Greene* (1963) 59 Cal.2d 404, 409-410, the California Supreme Court held that Civil Code section 1624 does not render unenforceable an oral agreement to make a will if equitable estoppel applies: “Although the statute [of frauds] requires that an agreement to make a provision by will be in writing [citations], a party will be estopped from relying on the statute where fraud would result from refusal to enforce an oral contract [citation]. The doctrine of estoppel has been applied [1] where an

unconscionable injury would result from denying enforcement after one party has been induced to make a serious change of position in reliance on the contract or [2] where unjust enrichment would result if a party who has received the benefits of the other's performance were allowed to invoke the statute."

Heilig contends that the allegations in the complaint establish a claim of equitable estoppel under the second of the two circumstances described in *Day v. Greene*, *supra*, 59 Cal.2d 404, unjust enrichment. "[E]quitable estoppel may apply where the promisor would be unjustly enriched by receiving the benefit of the promise's performance if the promisor were allowed to invoke the statute of frauds." (*Estate of Housley*, *supra*, 56 Cal.App.4th at p. 351.) A beneficiary of a promisor can be derivatively estopped where the decedent received the benefit of the agreement; permitting the beneficiary to invoke the statute of frauds would otherwise constitute unjust enrichment. (*Stahmer v. Schley* (1979) 96 Cal.App.3d 200, 203.) This is the type of estoppel claim Heilig asserts on appeal.

The derivative estoppel theory presupposes that Doris Spengler obtained some benefit from the alleged agreement with her husband and, thus, it would be unjust not to require her beneficiaries to go through with her side of the bargain by giving the proceeds of the duplex sale to Heilig. Wood contends that Heilig has not pled any such benefit to Doris Spengler because the property was held in joint tenancy from the date of acquisition until John Spengler's death. That form of ownership gave Doris Spengler the right to the property on her husband's death. (See *Estate of Propst* (1990) 50 Cal.3d 448, 455 ["The principal characteristic of joint tenancy is the right of survivorship"]; *Estate of Dow* (1947) 82 Cal.App.2d 675, 680 [the deceased joint tenant's interest ceases at death and is not part of his estate].) The only benefit specifically alleged in the second amended complaint is Doris Spengler's enjoyment of the rental income and other incidents of ownership of the duplex following her husband's death. Because she was

entitled to that by virtue of the joint tenancy, Wood contends that cannot be considered a benefit she obtained due to her alleged agreement to bequeath the property to Heilig.

Wood's argument disregards the fact that John Spengler had the right to terminate the joint tenancy at any time without his wife's consent. (*Estate of Propst, supra*, 50 Cal.3d at pp. 455-456.) As the California Supreme Court has explained, "[w]ith respect to real property, California courts have consistently applied the common law principle that '[a]n indisputable right of each joint tenant is the power to convey his or her separate estate by way of gift or otherwise without the knowledge or consent of the other joint tenant and to thereby terminate the joint tenancy.' " (*Id.*, at p. 456, quoting *Riddle v. Harmon* (1980) 102 Cal.App.3d 524, 527.) Thus, " '[a] joint tenant's right of survivorship is an expectancy that is not irrevocably fixed upon the creation of the estate [citation]; it arises only upon success in the ultimate gamble—survival—and then only if the unity of the estate has not theretofore been destroyed by' " an action which operates to sever the joint tenancy. (*Estate of Propst*, at p. 455, quoting *Tenhet v. Boswell* (1976) 18 Cal.3d 150, 155-156; see also *Estate of Mitchell* (1999) 76 Cal.App.4th 1378, 1392.) The termination of a joint tenancy changes the form of ownership into a tenancy in common and, by extinguishing the right of survivorship, permits a cotenant to make a testamentary disposition of his or her property. (*Estate of Mitchell*, at pp. 1385, 1392; *Estate of Grigsby* (1982) 134 Cal.App.3d 611, 618.)

Acceptance of Wood's position in this appeal would require us to rely on one legal characteristic of the joint tenancy form of ownership, the right of survivorship, while disregarding another characteristic, the possibility of unilateral termination of the joint tenancy. Because John Spengler had the ability to terminate the joint tenancy at any time, the fact that Doris Spengler had the right to survivorship at the time the alleged agreement was made does not demonstrate that she obtained no benefit from the agreement. Assuming the truth of the allegations in the complaint, the fact that John

Spengler, in reliance on the agreement, did *not* opt to terminate the joint tenancy before his death was of real benefit to her.<sup>1</sup>

Although the second amended complaint does not expressly allege that the oral agreement included mutual promises to abstain from severing the joint tenancy, we decline to shave the allegations of the complaint that closely. The complaint alleges that John and Doris Spengler agreed to bequeath the duplex to Heilig and that due to the agreement John Spengler “was induced to seriously change his position as to the ownership of the PROPERTY.” His promise not to terminate the joint tenancy and separately devise his interest in the property is implicit in the agreement as alleged. (See *Yue v. City of Auburn* (1992) 3 Cal.App.4th 751, 756 [“We treat the demurrer as admitting all material facts properly pleaded, as well as those which reasonably arise by implication”].) Applying liberal rules of construction of pleadings, we view the complaint as also containing the implicit allegation that John forbore making the change of title in reliance on his wife’s promise to carry out his wishes. (See *Redke v. Silvertrust* (1971) 6 Cal.3d 94, 101.)

Heilig was not obligated to plead with more specificity. “ ‘[A] plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his

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<sup>1</sup> The trial court’s order sustaining the demurrer does not acknowledge that John Spengler could unilaterally sever the joint tenancy. The trial court reasoned: “Since husband and wife held the property as joint tenants, Plaintiff does not allege unconscionable injury to husband or a serious change of position, because at the time of the agreement husband was not entitled to devise the property to anyone. Plaintiff does not allege unjust enrichment by wife because she was already entitled, at the time of the alleged agreement, to inherit the property in its entirety upon the death of her husband. Because husband and wife made no attempt to change the title to the property, the only reasonable conclusion is that wife and husband intended that the surviving spouse would make a gift of the property to Plaintiff.” The trial court’s analysis misses the fact that, because John Spengler could have severed the joint tenancy at any time, Doris Spengler did benefit from the agreement to bequeath the duplex to Heilig after both of their deaths.

cause of action.’ ” (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608, quoting *Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) “A cardinal rule of pleading is that only the ultimate facts need be alleged.” (*Ludgate Ins. Co.*, at p. 606.) “There is no need to require specificity in the pleadings because ‘modern discovery procedures necessarily affect the amount of detail that should be required in a pleading.’ ” (*Id.*, at p. 608.)<sup>2</sup>

Assuming the truth of the agreement as alleged, Doris Spengler benefited because her husband did not separately devise his interest and she retained the property for 15 years after his death until her own. That is enough to justify application of equitable estoppel. (See *Redke v. Silvertrust*, *supra*, 6 Cal.3d 94, 101 [wife did not change her will in reliance on husband’s promise to bequeath her portion of the estate to her daughter after his death]; *Day v. Greene*, *supra*, 59 Cal.2d at pp. 408, 410-411 [wife received benefit of substantial property transfers in return for her promise to provide for her husband’s daughter]; *Stahmer v. Schley*, *supra*, 96 Cal.App.3d at p. 202 [husband received benefit of wife’s agreement to devise her estate to him in return for agreement that he would in turn devise the estate to certain beneficiaries, including plaintiffs]; *Estate of Housley*, *supra*, 56 Cal.App.4th at p. 361 [father’s beneficiary would be estopped from relying on the statute of frauds to avoid oral agreement to leave estate to son if father received “substantial benefit” from son’s caretaking].) Respondent Wood may be derivatively estopped under the unjust enrichment theory from relying on the statute of frauds to avoid the alleged oral agreement.

The only ground offered by Wood below for dismissal of the third cause of action for negligence was that because Heilig cannot enforce the alleged oral agreement, she

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<sup>2</sup> Respondent argues that the complaint alleges the elements of a claim of estoppel but no facts upon which the claim is based. We disagree. The allegation that John Spengler’s change in position was “as to the ownership of the PROPERTY” is a factual allegation beyond the bare elements of an estoppel claim.

suffered no damages as a result of Wood's alleged negligence in selling the duplex without providing her notice. Because we conclude that, assuming the truth of the facts alleged in the complaint, Heilig's breach of contract action is not barred by the statute of frauds, Wood's argument that Heilig has no damages for the alleged negligence also fails.<sup>3</sup>

#### DISPOSITION

The judgment is reversed with respect to dismissal of the first and third causes of action, affirmed in all other respects, and remanded for further proceedings consistent with this opinion. Plaintiff is awarded her costs on appeal.

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GEMELLO, J.

We concur.

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JONES, P.J.

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SIMONS, J.

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<sup>3</sup> Heilig refers to the third cause of action as extrinsic fraud, but the third cause of action in the complaint is actually negligence. The second cause of action is for extrinsic fraud. Heilig did not object below to the demurrer being sustained as to that cause of action.